

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

AUG 31 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALAN B. SHUEY

Appeal No. 2005-1208
Application No. 10/029,087

ON BRIEF

Before PATE, NASE and BAHR, Administrative Patent Judges.

BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 20-23, which are all of the claims pending in this application. The appellant filed an amendment to claim 22 with the appeal brief (filed April 16, 2004) to address the objections raised by the examiner in the final rejection (mailed November 25, 2003). That amendment was entered, as evidenced by the notation made by the examiner on the first page thereof.

BACKGROUND

The appellant's invention relates to a releasable cable grip comprising, *inter alia*, a housing having at least one bore therethrough for passage of a cable segment and a spring-loaded wedge biased against the cable segment within the bore to wedge the cable segment against the bore to thereby grip the cable segment, and a release lever fixed to the wedge which may be utilized to move the wedge against the force of the spring away from the cable segment to permit movement of the cable segment relative to the bore. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The Applied Prior Art

The examiner relied upon the following prior art references of record in rejecting the appealed claims:

Pasbrig	4,889,320	Dec. 26, 1989
Facey et al. (Facey)	6,003,210	Dec. 21, 1999

The Rejection

The following rejection is before us for review.

Claims 20-23¹ stand rejected under 35 U.S.C. § 103 as being unpatentable over Facey in view of Pasbrig.

¹ The appellant (brief, page 6) and examiner (answer, mailed July 7, 2004, page 2) are in agreement that claim 23 was in effect included in this rejection and that the examiner's omission of claim 23 in the statement of the rejection on page 2 of the final rejection was inadvertent.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the final rejection and answer for the examiner's complete reasoning in support of the rejection and to the brief and reply brief (filed September 7, 2004) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. For the reasons which follow, the examiner's rejection is sustained.

Facey discloses a locking device 23 for locking a suspension strand 20, the device having twin bores 24A, 24B at least one of which is associated with a wedging means (wedges 25A, 25B) slidable along a channel 26A, 26B and urged by a compression spring 31A, 31B for gripping engagement with the strand 20. Facey's device differs from appellant's claim 22 in that it comprises an aperture 34A, 34B, as illustrated in Figure 8, located adjacent the inlet end 29A, 29B of the respective bore which is available as a guide for a separate tool 35 (see Figure 9) pushed into the channel to move the wedge against the urge of its spring to enable the strand to be freed from the grip of the wedge in the respective bore for adjustment in the opposite direction from insertion (column 3, lines 25-33) instead of a release lever fixed to the

wedge means and extending through a slot to the outside of the housing for moving the wedge to release the cable or strand, as called for in claim 22.

Pasbrig discloses a cable or rope clamping apparatus comprising an oblique hole 15 in a housing thereof for passage of a rope 16 and a spring-loaded clamping unit 5'' or 5 or 9 having axial projections 6 or 9' and 9'' fixed to the clamping unit and extending to the outside of the housing, with handles 10, 10' attached to the axial projections. The handles 10, 10' can be used both to accelerate the onset of the clamping unit into the clamping position and to release the rope from the clamping position (column 3, lines 11-18).

The examiner contends that it would have been obvious at the time the appellant's invention was made to one having ordinary skill in the art to provide a release lever according to the teachings of Pasbrig fixed to the wedge 25A, 25B of Facey because such an integral release lever will be "readily available when it is needed instead of needing a separate tool to release the wedge means where the tool may become lost" (final rejection, page 4). The examiner further points out that Pasbrig provides further motivation for the modification to Facey in column 2, lines 11-16, which teach that the mounting of the axial projections directly on the clamping unit causes the unclamping force to be transmitted directly to the clamping unit, as compared with arrangements including intermediate members, and is simpler and thus more reliable and less susceptible to problems.

Facey and Pasbrig each disclose alternative solutions to the problem of releasing the strand or rope from the gripping force of the wedging means, with Facey providing a separate tool to accomplish this and Pasbrig providing axial projections with handles connected to the wedging means. One of ordinary skill in the art, in selecting one of these known alternatives, would have appreciated from Pasbrig's teachings that the directly connected axial projections offer the advantages that they can be utilized both to accelerate the onset of the clamping effect and to release the rope from the clamping position and that they provide a simplified and thus more reliable device less susceptible to problems as compared with arrangements wherein the unclamping means is not directly connected to the clamping unit. As for this second advantage, while Pasbrig does not specifically mention separate tool unclamping means of the type taught by Facey, Pasbrig's language in column 2, lines 11-16, would have clearly conveyed to one of ordinary skill in the art that the direct mounting of the axial projections on the clamping unit produces a simplified and thus more reliable apparatus than unclamping means which are not directly connected to the wedging means, including those that utilize separate tools, like that of Facey. The skilled artisan would also have recognized the self-evident advantage of the ready availability of an attached release lever.

The appellant argues on page 9 of the brief that Facey teaches away from the combination proposed by the examiner because of Facey's statement (column 2, lines 31-34) that

[i]f the locking device is of the type described in WO 95/30844 or WO 97/36123, the kit is preferably provided with a tool for releasing or withdrawing either of the wedging means, for adjustment of the length of the suspension system.

As to the specific question of "teaching away," our reviewing court in In re Gurley, 27 F.3d 551, 553, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994) stated:

A reference may be said to teach away when a person of ordinary skill, upon [examining] the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.

Simply that there are differences between two references is insufficient to establish that such references "teach away" from any combination thereof. See In re Beattie, 974 F.2d 1309, 1312-13, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992).

Facey's teaching of preferably providing, in an equipment suspension kit including a locking device which is provided with apertures for insertion of a separate unclamping tool and which is not provided with a release lever fixed to the wedging means and extending to the outside of the housing, a tool for releasing or withdrawing either of the wedging means would in no way discourage one of ordinary skill in the art from instead providing a locking device provided with a release lever fixed to the wedging means, as taught by Pasbrig. The appellant's argument with respect to teaching away is thus not well taken.

The appellant's reliance on Winner International Royalty Corp. v. Wang, 202 F.3d 1340, 1349, 53 USPQ2d 1580, 1587 (Fed. Cir. 2000), cert. denied, 530 U.S. 1238

(2000) is also misplaced. The appellant has not adduced any evidence that the type of trade-off situation present in Winner would be involved in the modification proposed by the examiner. Specifically, the appellant has not come forth with any evidence to support the argument that the separate unclamping tool disclosed by Facey was intended or recognized as a security feature² and we find no indication in Facey that this was the case.

For the foregoing reasons, the arguments in the appellant's brief and reply brief are unpersuasive that the examiner erred in rejecting claim 22 as being unpatentable over Facey in view of Pasbrig. It follows that the rejection of claim 22, as well as claims 20, 21 and 23 which the appellant concedes stand or fall with claim 22 (brief, page 7), is sustained.

CONCLUSION

To summarize, the decision of the examiner to reject claims 20-23 under 35 U.S.C. § 103 is affirmed.

² An attorney's arguments in a brief cannot take the place of evidence. In re Pearson, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974). Arguments relying on factually unsupported assumptions to rebut a *prima facie* case of obviousness "can hardly be considered factual evidence." See In re De Blauwe, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED



William E. Darte, III

WILLIAM F. PATE, III
Administrative Patent Judge


JEFFREY V. NASE
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

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